



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: East West Research, Inc.

File: B-239516

Date: August 29, 1990

Richard Snyder, for the protester.

Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for the agency.

Jeanne White Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency may use manufacturer part numbers as item descriptions in procurements conducted under Federal Acquisition Regulation (FAR) small purchase procedures so long as equal items can be offered thus satisfying the FAR requirement that those procurements be competed to the maximum extent practicable.

2. In keeping with their purpose--promoting efficiency and economy in contracting--small purchase procedures are specifically excepted from the full and open competition requirements of the Competition in Contracting Act of 1984 and the mandatory use of commercial item descriptions.

DECISION

East West Research, Inc. protests the item description in request for quotations (RFQ) No. DLA400-90-T-A810, issued by the Defense Logistics Agency (DLA) for 300 welder electrode holders, NSN 3439-00-603-8081. We deny the protest.

The solicitation was issued on March 26, 1990, under small purchase procedures. The required item is a positive grip, two-position holder used as a clamping device for grasping and making firm electrical contact with a welding electrode in use while providing an insulated handle for the welder's hand. It was described in the RFQ by the manufacturer's name and part number: "holder, electrode, welder, Tweco Products, Inc., Cage 89381, P/N 70059." However, the RFQ also permitted quotes on alternate products, which would be

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evaluated for technical acceptability. Prior to the original closing date, East West filed an agency-level protest, claiming that no sole-source justification had been made. The protest was denied on the ground that the procurement was not being conducted on a sole-source basis, as alternate offers were permitted. Prior to the revised closing date, East West filed this protest with our Office.

East West maintains that it submitted an alternate item that DLA improperly determined to be an unacceptable alternate product, and that the item description as it is being applied creates, in effect, a sole-source procurement, despite the provision allowing quotes on alternate items. East West claims that the required item is a duplicate of an electrode holder covered under a commercial item description (CID) that could be used here without diluting the government's requirement. East West believes the item description is contrary to a Department of Defense (DOD) standardization policy, and a DOD Directive requiring defense agencies to satisfy their needs, where practicable, through existing commercial and military designs.

The small purchase procedures of the Federal Acquisition Regulation (FAR)^{1/} set forth abbreviated requirements designed to minimize administrative costs, Ultraviolet Purification Sys., Inc., B-226941, Sept. 10, 1987, 87-2 CPD ¶ 229, and to promote efficiency and economy in contracting. 10 U.S.C. § 2304(g)(1) (1988). In that interest, they are excepted from the requirement set forth in the Competition in Contracting Act of 1984 (CICA) that agencies obtain full and open competition through the use of competitive procedures when conducting procurements. 10 U.S.C. § 2304(a)(1)(A); FAR § 6.001(a); Water Resources Educ., B-224682, Nov. 28, 1986, 86-2 CPD ¶ 626. Nevertheless, CICA still requires agencies to obtain competition to the maximum extent practicable when utilizing small purchase procedures. Id.; 10 U.S.C. § 2304(g)(4); FAR § 13.106(b)(1).

We find nothing improper in the item description as stated in the solicitation. Because the procurement is being conducted using small purchase procedures, it is not subject to the competition requirements of CICA, contrary to East West's allegations. The only applicable competition standard in this case, therefore, is that the procurement

^{1/} Small purchase procedures can be used for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed \$25,000. FAR § 13.000.

be competed to the maximum extent practicable. FAR § 13.106(b)(1). Where, as here, an agency has determined that a particular manufacturer's part number is the only product that will meet its minimum needs, the only practical means of possibly expanding competition is to indicate that offers of alternate items also will be reviewed for technical acceptability. This is precisely what DLA did here; these actions comply with the requirement for maximum practicable competition.^{2/} Furthermore, we have held that the use of manufacturer part numbers to describe a requirement is permissible so long as doing so does not preclude vendors from offering equal items; in fact, we have recognized that such descriptions are an appropriate approach to procuring under small purchase procedures since they promote efficiency in contracting, the goal of those procedures. See East West Research, Inc., B-238177 et al., Apr. 18, 1990, 90-1 CPD ¶ 399.


East West's claim that it submitted an acceptable alternate offer is not established in the record. The agency explains that the predominant user of the electrode holder is the Navy, which uses it aboard ships where welding frequently must be performed in small, confined areas, making size and weight of the holder critical factors. The required item in the solicitation is a small, lightweight, low-profile holder for working in tight quarters, whereas the Bernard T-200 offered by East West is 1-3/4 inches larger, which, DLA determined, could result in delay or inability of use in confined areas. East West has not refuted that conclusion. The contracting agency has the primary responsibility for determining its minimum needs and for determining whether an offered item will satisfy those needs, since it is the agency that is most familiar with the conditions under which the supplies or services will be used and that must bear the burden of difficulties incurred by reason of a defective evaluation. East West Research, Inc., B-238316, Apr. 18, 1990, 90-1 CPD ¶ 400; Rhine Air, B-226907, Jul. 29, 1987, 87-2 CPD ¶ 110. Hence, our Office will not question an agency's determination of its minimum needs unless there is a clear showing that the determination has no reasonable basis. East West Research, Inc., B-238316, supra. Again, East West has made no such showing.

^{2/} Even were the procurement subject to full and open competition, the acquisition of items on a source-controlled basis is permitted, so long as nonapproved sources are given a reasonable opportunity to qualify. 10 U.S.C. § 2319(c); Castoleum Corp., B-236573, 69 Comp. Gen. 130 (1989), 89-2 CPD ¶ 549.

Similarly, East West's argument that CID A-A-51161 should be used in place of the item description has no merit. When an acquisition is being conducted under small purchase procedures, the use of CIDs is not mandatory. FAR § 10.006(a)(1)(ii). In any case, contrary to East West's allegation, CID A-A-51161 does not appear to be equivalent to the specified part. DLA explains that CID A-A-51161 is a standard, heavy duty, commercial-type electrode holder used in a production environment. It is a tong grip unit with a minimum ampere rating of 200, weight of 10 to 14 ounces, and a length of up to 8 inches. In contrast, the specified Tweco P/N 70059 is a small, low-profile, lightweight holder used in tight quarters. It is a positive grip unit with a 150 ampere rating, weight of 7-1/2 ounces and length of 7 inches. Because of the larger size of the CID, it does not appear to be equivalent.

As for the protester's argument that DLA's requirement here was stated in a manner contrary to a DOD policy and Directive, it is well-established that an agency's internal policies and instructions do not have the force and effect of law. Thus, the agency's alleged failure to comply with them in a particular case involves a matter for consideration within the agency itself, rather than through the bid protest process. East West Research, Inc., B-238316, supra.

The protest is denied.


for James F. Hinchman
General Counsel